

1 The Honorable Thomas S. Zilly
2 Trial Date: February 26, 2024
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I. JURISDICTION

Jurisdiction was originally vested in this Court because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states and countries. *See* 28 U.S.C. 1332(a). All acts giving rise to this suit occurred at a used vehicle dealership doing business in Washington state as Northwest Motorsport, owned and operated by Defendants herein. All named Defendants, other than Northwest Motorsport, LLC, and Northwest Motorsport, Inc., were previously dismissed by the Court.

II. CLAIMS AND DEFENSES

A. The Plaintiff will pursue at trial the following claims:

1. Violations of the Consumer Protection Act RCW 19.86 *et. seq.* (*per se* and direct violations);
2. Breach of Implied Warranties;
3. Breach of Contract; and
4. Negligence.

Each of these causes of action arose from the purchase of Wolfgang Olson's purchase of a 2001 RAM 3500 from Northwest Motorsport that had an undisclosed tampered emission control system that rendered it unmerchantable. In addition, the Defendant also sold the Plaintiff a service contract that was void at the point of sale, due to the undisclosed modifications in the RAM truck.

B. The Defendants will pursue the following affirmative defenses and/or claims:

1. Plaintiff has failed to state a claim upon which relief can be granted, whether under the CPA or any other cause of action, because he has no admissible evidence of any unfair or deceptive act or the damages he alleges and no evidence that any act or omission of NWMS was the proximate cause of the damages alleged.

2. Plaintiff cannot meet his burden of proof to show any alleged breach of contract or warranty on the part of NWMS.

3. Pursuant to the provisions of the contract(s) between the parties, NWMS claims its attorneys' fees incurred in defending this action with respect to the individual claim of Mr. Olson. These fees include that portion of NWMS' defense of the class action claim relating to Mr. Olson individually and all fees for the defense of this matter after the claims of the putative class members other than Mr. Olson were dismissed.

4. Plaintiffs' claims are barred by, and Plaintiff is otherwise bound by, the terms and conditions, disclaimers of warranties, limitation of liability provisions, remedy limitations, and other legally binding provisions made part of the contract between Plaintiff and NWMS.

5. Plaintiff's negligence claims fails as a matter of law because NWMS owed no duty in tort to plaintiff and plaintiff cannot meet his burden of proof on any of the required elements of a negligence claim.

III. ADMITTED FACTS

The following facts are admitted by the parties:

1. Wolfgang Olson is a resident of Washington State.

2. Northwest Motorsport, LLC is a Washington business entity.

3. Northwest Motorsport, Inc. was a Washington business entity at the time plaintiff purchased the vehicle that is the subject of this lawsuit.

4. Wolfgang Olson purchased a 2001 Ram 3500 from Northwest Motorsport, Inc. on November 1, 2017.

5. Wolfgang Olson purchased a service contract from Auto Services, Company, Inc. at the time he purchased the 2001 Ram 3500 on November 1, 2017.

6. Wolfgang Olson never submitted a claim or otherwise sought to use the service contract he purchased on November 1, 2017 and that contract has now expired.

7. The odometer reading on Wolfgang Olson's 2001 Ram 3500 at the time he purchased it was 101,972 miles.

8. The odometer reading on Wolfgang Olson' 2001 Ram 3500 is over 143,000 miles today.

IV. ISSUES OF LAW

1. Whether the Defendant violated the Washington Consumer Protection Act (CPA) causing injury and damages to the Plaintiff, Wolfgang Olson
2. Whether the Defendant breached the Implied Warranty of Merchantability when it sold a 2001 RAM 3500 with a modified emissions system to Wolfgang Olson and is liable to the Plaintiff for damages arising therefrom.

3. Whether the Defendant breached a contract to sell the 2001 RAM 3500 with a modified emissions system to Wolfgang Olson and is liable to the Plaintiff for damages arising therefrom.
4. Whether the Defendant is liable to Plaintiff for negligence in selling a 2001 RAM 3500 with a modified emissions system to Wolfgang Olson and is liable to the Plaintiff for damages arising therefrom.
5. Whether the recent amendments to FRE 702 that require a demonstration that expert opinions are based on sufficient facts and reflect application of reliable principles and methods to those facts preclude plaintiff's experts from testifying at trial.

V. EXPERT WITNESSES

(a) Each party shall be limited to three expert witnesses for the effects of any modifications to the emission control system of the vehicle on the issues of 1) any alleged resulting damage to the vehicle and 2) any alleged effect on licensing or registering the vehicle.

(b) The names and addresses of the expert witnesses to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of Plaintiff:

a) Chris Cowland, C Squared Engineering, LLC, 169 Summerton Dr. Bluffton, SC, 29910. Chris Cowland will be testifying as to liability and damages.

b) Michael St. Denis, Revecorp, 5732 Lonetree Blvd., Rocklin, CA, 95765. Michael St. Denis will be testifying as to liability and damages.

c) Ed Schaplow, Allview Services, Inc. 2215 S. Castle Way, Lynnwood, WA, 98306.

Ed Schaplow will be testifying as to liability and damages.

(2) On behalf of Defendants:

Defendant does not intend to call any expert witness in its case in chief and reserves the right to call any rebuttal witness the necessity of whose testimony cannot be reasonably anticipated before trial.

VI. OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of Plaintiff:

1. Wolfgang Olson, Plaintiff, c/o Eugene N. Bolin, Jr. Law Offices of Eugene N. Bolin, Jr. 144 Railroad Avenue, Ste. 308, Edmonds, Washington, 98020. Wolfgang Olson is the plaintiff and expected to provide testimony which is consistent with his deposition testimony.
2. Madison Gero, Plaintiff's partner, 7777 Hellman Rd., Clinton, WA 98236. Madison Gero is a fact witness and has knowledge of a general nature regarding the facts and circumstances outlined in the complaint.
3. Mark Olson, Plaintiff's father, 5608 17thAve. NW #546, Seattle, Washington. Mark is a fact witness and is expected to testify as to liability and damages.

(b) On behalf of Defendants:

1 2. Wolfgang Olson, Plaintiff, c/o Eugene N. Bolin, Jr. Law Offices of Eugene
 2 N. Bolin, Jr. 144 Railroad Avenue, Ste. 308, Edmonds, Washington, 98020.

3 Wolfgang Olson is the plaintiff and expected to provide testimony which
 4 is consistent with his deposition testimony.

VII. EXHIBITS

5 6 7 **An amended exhibit list shall be filed by Wednesday, February 21, 2024.**

8 9 The Parties' Objection Code:

L	Evidence should be limited to facts and assertions related to this Plaintiff. The Complaint, Answers, Discovery Responses and Requests For Admission in this matter all primarily relate to a now-dismissed class action. The pleadings, discovery, and depositions pertain primarily to class matters and contain factual allegations, legal conclusions, and assertions wholly irrelevant to this Plaintiff, the particular vehicle he purchased in 2017, and defendants who are now dismissed. In particular, the only modification plaintiff alleges here is the use of a "tuner." Evidence of a myriad of other modifications that are sometimes made to other vehicles, and the effect of such modifications on performance or licensure has no relevance to this case.
F	Lack of foundation
D	See objections to deposition designations noted in transcript
E	Exhibit is objectionable because it constitutes attempted expert testimony from a person who has been withdrawn as an expert (Fed. R. Civ. P. 26)
X	Exclude expert opinions already barred by this Court. In its rulings on defendants' motion for partial judgment the Court ruled that only the

1	opinions contained in the declarations of Mr. Cowland DKT #43, Mr. St. Denis DKT #42, and Mr. Schaplow DKT #43 may be relied on by Plaintiff.
3	A Attorneys involved in this case cannot be witnesses and their declarations in support of motion practice are inadmissible for this reason RPC 3.7

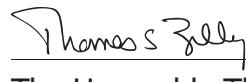
6 "Disputed", identify the objection in the Objection column. An objection based
 7 on a Fed. R. Evid. should reference the rule number; additional objections should be
 8 referenced by a code that the parties include with the exhibit list. The "Admitted" column
 9 is for use by the Court.

10 (No party is required to list any exhibit which is listed by another party, or any
 11 exhibit to be used for impeachment only. See LCR 16 for further explanation of
 12 numbering of exhibits).

VIII. ACTION BY THE COURT

- 12 a) This case is scheduled for trial before the Honorable Zilly on February 26, 2024, at
 13 9:00 a.m.
- 14 b) Trial briefs shall be submitted to the court on or before February 12, 2024.
- 15 c) This order has been approved by the parties as evidenced by the signatures of their
 16 counsel. This order shall control the subsequent course of the action unless modified
 17 by a subsequent order. This order shall not be amended except by order of the court
 18 pursuant to agreement of the parties or to prevent manifest injustice.
- 19 d) An amended exhibit list shall be filed by Wednesday, February 21, 2024.

20
 21 DATED this 16th day of February, 2024.

22
 23 
 24 The Honorable Thomas S. Zilly

1 FORM APPROVED

2 Forsberg & Umlauf, P.S.

3 By:

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11 *Attorneys for Defendants*

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Attorneys for Plaintiffs

26 PRETRIAL ORDER- 9
27 NO. 2:20-cv-01616 TSZ

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